IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5780 of 2007(K)

CRIME NO.767/07 OF N.PARAVUR POLICE STATION

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PETITIONER/ACCUSED NO.1

K.S.SURESH KUMAR, AGED 35 YEARS,
S/O SANKARAN, SANKARACHAL,
SOUTH NALUVAZHI, VELUTHATTU ROAD,
N.PARAVUR.

BY ADV. SRI.P.L.DEVADAS

RESPONDENTS: COMPLAINANT

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1. S.I. OF POLICE,
NORTH PARAVUR POLICE STATION,
N.PARAVUR.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P. SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5780 OF 2007

Dated this the 25th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. He along with two other co-accused, whose identity has not been ascertained yet, faces allegations for offences punishable, inter alia, under Secs.324 and 326 read with Sec.34 of the IPC. The crux of the allegations against the petitioner is that he, along with the co-accused whose services he is alleged to have requisitioned, attacked the de facto complainant on account of prior animosity which he entertained towards the victim/de facto complainant. The alleged motive, according to the de facto complainant, is some business rivalry; whereas the petitioner asserts that there is strain in the relationship between the victim and the petitioner, the victim allegedly being a paramour of the wife of the

petitioner. Whatever that be, the allegation is that armed with dangerous weapons, three persons including the petitioner attacked the victim at 11.40 p.m. on 23/8/07. The victim had suffered fairly serious injuries, including a fracture. He was rushed to the hospital by some others and to the Doctor it is alleged that the assault by three persons was the cause of the injuries. First Information Statement is recorded on 24/8/07 at 11.10 a.m. in which a fairly detailed narration of the incident with the name of the petitioner as a principal assailant is revealed by the de facto complainant. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the matrimonial tie between the petitioner and his wife is strained because of the intrusion of the de facto complainant into the private space between the spouses. The petitioner is a journalist. The local police is also inimical to the petitioner as he had published reports about the misdeeds of certain police officials. In these circumstances, the petitioner is being falsely implicated and proceeded against. It is prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application.

The learned Public Prosecutor submits that all the available indications point convincingly to the complicity of the petitioner. Notwithstanding the fact that the alleged motive has not been stated clearly and forthrightly in the First Information Station, the fact remains that the materials collected point convincingly to the complicity of the petitioner. The petitioner is not, at any rate, entitled to the invocation of the discretion under Sec.438 of the Cr.P.C. The petitioner may be directed to surrender before the Investigating Officer or the learned Magistrate and seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. In the facts and circumstances of this case to which I have made a brief reference above, I am satisfied that there is merit in the opposition by the learned Public Prosecutor. This, I agree with the learned Public Prosecutor, is not a case in which the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked. This is a fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the

learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge